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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,937	12/16/2003	Edward Gerard Dolton III	ED-001	9641
39550	7590	06/30/2005	EXAMINER	
KALIKO & YEAGER, L.L.C. 500 NORTH FRANKLIN TURNPIKE RAMSEY, NJ 07446			PRINCE, FRED G	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,937

Applicant(s)

DOLTON, EDWARD GERARD

Examiner

Fred Prince

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-14, 16, and 18-19 is/are rejected.
- 7) ☒ Claim(s) 5 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 8, and 11 are again rejected under 35 U.S.C. 102(b) as being anticipated by Hayes.

Hayes teaches a housing (42) defined by a top section (46), a rear section (44), two side sections (44), a bottom section (14), and a substantially hollow cavity (Fig. 3) that runs along the inner longitudinal axis of the housing, a handle means (34) mounted to the housing providing directional control and movement of the housing, a wheel means (16) movably mounted to the housing for facilitating forward, backward, and angular movement of the housing along the swimming pool surface, at least one electrically-operated debris agitator means (22) rotatably attached to the housing to facilitate water movement through the housing and the removal of debris from the swimming pool surface, a scraping means (20) attached to the bottom of the housing for scraping debris from the swimming pool surface, and a debris collection means (40) detachably connected to the housing that filters debris from pool water and that allows filtered pool water to exit from the debris collection means, and a filtration means (48).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-3, 7, 9-10, 12-14, and 18-19 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes.

Hayes teaches a housing (42) defined by a top section (46), a rear section (44), two side sections (44), a bottom section (14), and a substantially hollow cavity (Fig. 3) that runs along the inner longitudinal axis of the housing, a handle means (34) mounted to the housing providing directional control and movement of the housing, a wheel means (16) movably mounted to the housing for facilitating forward, backward, and angular movement of the housing along the swimming pool surface, at least one electrically-operated debris agitator means (22) rotatably attached to the housing to facilitate water movement through the housing and the removal of debris from the swimming pool surface, a scraping means (20) attached to the bottom of the housing for scraping debris from the swimming pool surface, and a debris collection means (40) detachably connected to the housing that filters debris from pool water and that allows filtered pool water to exit from the debris collection means, and a filtration means (48).

Hayes does not disclose an adjustable handle means or a handle pivotally attached to the housing.

In any case, it is submitted that it is well within the purview of the skilled artisan to provide a handle that is adjustable in length and pivotally attached to a housing in order to, for instance accommodate operators of different height while providing flexibility in movement (see, for example, US Pat No 5,336,403 to Marbach). Accordingly, it would have been readily obvious for the skilled artisan to have modified the cleaner of Hayes such that it includes a handle that is adjustable in length and pivotally attached to a housing in order to, for instance accommodate operators of different height while providing flexibility in movement.

Hayes does not disclose a debris agitator geared to rotational movement of wheels, electrically operated wheels, or a water-driven debris agitator.

In any case, it is submitted that it is well within the purview of the skilled artisan to have to provide an apparatus with a debris agitator geared to rotational movement of wheels, electrically-operated wheels, or a water-driven debris agitator in order to, for instance, maximize use of energy generated during operation of the apparatus and move wheels automatically (see, for example, US Pat No 5,507,058 to Minami et al.). Accordingly, it would have been readily obvious for the skilled artisan to have modified the cleaner of Hayes such that it includes a debris agitator geared to rotational movement of wheels, electrically-operated or a water-driven debris agitator in order to, for instance, maximize use of energy generated during operation of the apparatus.

Response to Arguments

5. Applicant's arguments filed April 21, 2005 have been fully considered but they are not persuasive.

Applicant argues that the impeller of Hughes is used to pump only water through the opening in the bottom of the apparatus. However, it is noted that the impeller necessarily agitates (i.e., gives motion) to debris sucked into the housing from the pool surface and necessarily "facilitates" debris removal from the surface into the cleaner housing. Accordingly, the argument fails to patentably distinguish the instant invention over the prior art.

Applicant argues that the impeller of Hayes does not make contact with the pool surface. However, it is noted that applicant does not claim that the debris agitator contacts the pool surface, but merely "facilitates" debris removal. Accordingly, as applicant is arguing a limitation not claimed, the argument fails to patentably distinguish the instant invention over the prior art.

Allowable Subject Matter

6. Claim 17 is allowed.
7. Claims 5 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art is US Pat No 3,886,616 to Hayes. Per claims 5, 15, and 17, while it is known in the art to provide a housing defined by a top section, a rear section, two side sections, a bottom section, and a substantially hollow cavity that runs along the inner longitudinal axis of the housing; a handle means mounted to the housing

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for providing directional control and movement of the housing; a wheel means movably mounted to the housing for facilitating forward, backward, and angular movement of the housing along the swimming pool surface; at least one debris agitator means rotatably attached to the housing to facilitate water movement through the housing and the removal of debris from the swimming pool surface; a scraping means attached to the bottom of the housing for scraping debris from the swimming pool surface; and a debris collection means detachably connected to the housing that filters debris from pool water and that allows filtered pool water to exit from the debris collection, and first (40) and second (48) filter means, it is noted that Hayes does not disclose the relative pore sizes of the filters described and illustrated in '616. In the examiner's opinion, the prior art fails to teach or fairly suggest first and second filter means having the function recited in combination with the invention of Hayes. The recitation that the first means removes larger debris and the second filter removes smaller debris is given patentable weight as the recitation provides structure regarding the fluid connection relationship of the impeller, first filter means, and second filter means. Accordingly, an apparatus that has first and second filters that are not capable of the instantly recited function falls outside the scope of the instant invention.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Fred Prince

Primary Examiner

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fgp

6/27/05